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MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS
DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY

FROM: Cheryl Sherwood /s/ *Cheryl Sherwood*
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SUBJECT: Interim Guidance on the Federal Payment Levy Program
(FPLP) Continuous 100% Levy on Certain Federal
Contractor Payments

The purpose of this memorandum is to issue interim guidance regarding the impact of the change in the FPLP authority and certain Federal contractor payments. Please ensure this information is distributed to all affected employees within your organization.

Background

Since July 2000, the FPLP has electronically matched and subsequently continuously levied 15 percent of certain Federal payments pursuant to Internal Revenue Code (IRC) 6331(h). The American Jobs Creation Act of 2004, Section 887, "Modification of Continuing Levy on Payments to Federal Vendors," amended IRC 6331(h) and now allows the FPLP to levy up to 100 percent of certain Federal vendor payments. Starting April 15, 2005, the FPLP will begin incorporating the 100 percent levy change on certain Department of Defense (DoD) contracts paid by the Defense Finance and Accounting Service (DFAS) Mechanization of Contract Administration Services (MOCAS) system, the remaining DFAS vendor payment systems and other Federal civilian agencies will be incorporated in the future. Because of the FPLP levy percentage increase, there may be situations where a continuous 100 percent levy may impact national security or jeopardize contract performance resulting in significant additional costs to the Federal government.

When advised by DoD through channels established by interagency agreement that the FPLP levy is impacting national security or jeopardizing contract performance, FPLP headquarters will contact the local FPLP coordinator in Technical Services-Advisory to facilitate expedited handling of certain FPLP cases. If the FPLP coordinator is not available, the group manager is responsible for ensuring that the actions listed below are taken.

The local FPLP coordinator will, within one work day:

- open a 193 Lien/Levy module;
- note the case history; and
- initiate a mandatory outgoing SPBOI Courtesy Investigation to the appropriate collection field function group, or, if the case is already assigned, to the revenue officer.

The field group manager assigning the Courtesy Investigation should discuss with the revenue officer that, because of the sensitive nature of the investigation, contact with the taxpayer must be expedited, and generally should occur within three work days from receipt. (See IRM 5.1.8, Courtesy Investigations.)

National Security

For release of the levy, FPLP headquarters will contact the local FPLP coordinator to release the FPLP levy and/or block the FPLP with Transaction Code (TC) 971 Action Code (AC) 061 or the appropriate exclusion TC. There may be situations where the levy will not be fully released, but where it is agreed that only a partial amount (less than 100 percent) may still be levied.

There will be no OI levy release determination necessary from the collection field function; the local FPLP coordinator will open a 193 Lien/Levy module and note the case history. The levy release, as determined by IRS FPLP headquarters, should be completed within 48 hours of DoD's request.

For return of levied proceeds, if applicable, IRS FPLP headquarters will initiate a request to electronically return the proceeds (full or partial) to the taxpayer directly through Treasury's Financial Management Services (FMS). The return of levied proceeds will be indicated with a TC 672 DPC 18 and will be electronically refunded by FMS back to the taxpayer's financial account to which it would have originally been deposited. Usually this will take place within 48 hours from the time FMS receives the request from the IRS. (Standard IRS manual refund procedures of these levied proceeds will not be initiated in these situations.)

There will be no return of levy proceeds determination necessary from the collection field function; the local FPLP coordinator will open a 193 Lien/Levy module and note the

case history. Technical Services-Advisory will close out the 193 module upon notification by the FPLP headquarters that no further action is needed.

The case will still need to be resolved through the ICS mandatory OI. This mandatory OI will require expedited handling to ensure resolution of the case in order satisfy any outstanding national security and interagency concerns.

Jeopardized Contract Performance

FPLP headquarters will contact the local FPLP coordinator to facilitate the issuance of an outgoing SPBOI mandatory OI requiring expedited handling to the collection field function.

The local FPLP coordinator will, within one work day:

- open a 193 Lien/Levy module;
- notate the case history; and
- initiate a mandatory outgoing SPBOI Courtesy Investigation to the appropriate collection field function group, or, if the case is already assigned, to the revenue officer.

The collection field function group should:

- make contact with the taxpayer expeditiously;
- make a levy release determination; and
- notify FPLP headquarters, through the FPLP coordinator, the results of the contact and the levy release determination.

The levy release determination should take into consideration the mitigating circumstances raised by DoD about the potential financial loss to the Federal government. If the levy release is warranted, then process the release under IRM 5.11.7.2.6, Blocking or Releasing FPLP Levy. There may be situations where the levy will not need to be fully released when it is agreed that only a partial amount (less than 100 percent) may still be levied. To receive only a partial amount of the FPLP levy payment under these reasons, the 100 percent FPLP payment will need to be posted, and then a partial return of levy proceeds should be processed (see below).

The return of levy proceeds, if warranted, will be considered on a case by case basis by the revenue officer and, if returning the proceeds in full or part is warranted, will be processed through the standard manual refund procedures within IRS under IRM 5.11.7.2.7.

The case must still be resolved through the mandatory OI by the collection field function. Again, this mandatory OI will require expedited handling to ensure resolution of the case in order satisfy any outstanding interagency concerns. Technical Services-Advisory will close out the 193 module upon notification by the FPLP headquarters that no further action is needed.

Whether the issue is national security or jeopardized contract performance, it will involve the IRS contacting the taxpayer regarding the levy relief, and not the taxpayer contacting the IRS. Therefore, during the course of resolving the case in either situation, if the taxpayer does not make the concerted effort to contact and/or resolve the case with the revenue officer, it may be necessary to contact FPLP headquarters through the local FPLP coordinator to determine if the FPLP should continue and to consider its impact with the DoD. Contact may be made with DoD as long as Third Party contact provisions are satisfied.

If the taxpayer requests release of a levy on a DoD contract because the levy will impact national security or jeopardize contract performance and the revenue officer has not already been contacted through the local FPLP coordinator already to address this issue, then the taxpayer should be referred to their DoD contracting officer.

Relevant sections of Internal Revenue Manual 5.11.7, Automated Levy Programs, will be updated to reflect these procedures by April 1, 2006.

If you have any questions, please contact me or have a member of your staff contact Maureen Rattie. Field employees should raise any questions or concerns through the appropriate management chain and/or the local FPLP coordinator.

cc: Director, Collection
Director, Planning and Analysis